

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Charis Jones	Team: Squad #7	CCRB Case #: 201901701	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 02/15/2019 5:35 PM	Location of Incident: In front of 1212 6th Avenue	Precinct: 18	18 Mo. SOL 8/15/2020	EO SOL 4/1/2021	
Date/Time CV Reported Fri, 02/15/2019 5:41 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 02/25/2019 11:45 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Harry Ortiz	10306	942298	PBMS SU
2. POM Brendan Gould	03552	953925	PBMS SU

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Karol Juchniewicz	01605	941978	TB DT32
2. LT Angel Mendez	00000	913434	PBMS SU

Officer(s)	Allegation	Investigator Recommendation
A.POM Harry Ortiz	Abuse: Police Officer Harry Ortiz threatened to seize § 87(2)(b)'s property.	
B.POM Brendan Gould	Abuse: Police Officer Brendan Gould took (a) photograph (s)/recording(s) of § 87(2)(b)	

Case Summary

On February 15, 2019, § 87(2)(b) called IAB and filed this complaint generating original log # 19-6363. The CCRB received the log on February 25, 2019.

On February 15, 2019, at approximately 5:35 p.m., § 87(2)(b) was making art in the vicinity of 6th Avenue between West 47th Street and West 48th Street in Manhattan. Police Officers Harry Ortiz and Brendan Gould from the 181 Command of Patrol Borough Manhattan South, approached § 87(2)(b). PO Ortiz said to § 87(2)(b) “Shut up. You have to close. You have to move, I am going to take and confiscate your stuff” (**Allegation A: abuse of authority**, § 87(2)(g)). After PO Ortiz issued § 87(2)(b) two summonses, one for § 87(2)(b) and the other for § 87(2)(b), § 87(2)(b) began to protest. PO Gould stood in the street and began to film § 87(2)(b) (**Allegation B: abuse of authority**, § 87(2)(g)).

There is no video evidence regarding this complaint.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Harry Ortiz threatened to seize § 87(2)(b)'s property.

§ 87(2)(b) (Board Review 01) recalled that he was working on his art display when PO Ortiz and PO Gould approached him on foot. PO Ortiz immediately said, “Shut up. You have to close. You have to move, I am going to take and confiscate your stuff.” § 87(2)(b) had not said anything prior to PO Ortiz’s initial statement. § 87(2)(b) then said, “Good afternoon. Yes, I will move officer but I must explain to you that I am allowed to be here. I have to inform you that I am doing my public art in a public place, I am not a vendor. I prohibit you from damaging my artwork. It is my constitutional right.” PO Ortiz told § 87(2)(b) he had to move again. § 87(2)(b) did not move. During his interview, § 87(2)(b) provided photographs of PO Ortiz measuring his table as well as images of his art display at the time (Board Review 08).

PO Ortiz (Board Review 02) recalled that he and Sergeant Juchniewicz were the ones that initially approached § 87(2)(b) on the sidewalk. However, the investigation determined that it was PO Gould who accompanied PO Ortiz. As PO Ortiz approached § 87(2)(b) he observed a large display of pictures on the ground and on the table where § 87(2)(b) was standing. PO Ortiz identified himself and explained to § 87(2)(b) that he was on 6th Avenue which was a restricted street and that individuals were not allowed to vend there at that time. § 87(2)(b) told PO Ortiz that he was violating his constitutional rights. PO Ortiz told § 87(2)(b) that his table was over a grate and not within regulations of what was an acceptable length for vending. § 87(2)(b)'s table had two tables that measured to be 108 inches (9 feet). PO Ortiz explained and all tables used for vending purposes must be at or under eight feet long. PO Ortiz and PO Gould walked across the street back to their vehicle and § 87(2)(b) followed them. § 87(2)(b) then provided PO Ortiz with his tax stamp. § 87(2)(b) PO Ortiz, and PO Gould then walked back to where § 87(2)(b) had his

property. PO Ortiz explained to him that he was going to be issued two summonses, one for § 87(2)(b) and the other for § 87(2)(b). PO Ortiz and PO Gould measured § 87(2)(b)'s table. PO Ortiz then told § 87(2)(b) that he could confiscate his stuff if he did not leave the location and that he could get it back by going through various procedures. PO Ortiz went back to the vehicle to write the summonses and then returned to give them to § 87(2)(b).

Sgt. Juchniewicz (Board Review 03) recalled that before the PO Ortiz and PO Gould exited the vehicle, he observed § 87(2)(b) setting up his display on 6th Avenue, which is a restricted area. The restrictions are that no one is permitted to vend from 33rd Street to 59th Street on 6th Avenue, Monday through Saturday, from 8:00 a.m. to 7:00 p.m. PO Gould and PO Ortiz exited the vehicle and approached § 87(2)(b). Sgt. Juchniewicz remained in the vehicle for the duration of the incident. He did not hear the conversation between the officers and the traffic on 6th Avenue occasionally obstructed his view. Sgt. Juchniewicz did not hear PO Ortiz or PO Gould threaten to confiscate § 87(2)(b)'s property. Sgt. Juchniewicz stated that § 87(2)(b)'s property could have been taken and vouchered per procedure if he refused to leave the location.

PO Gould (Board Review 04) recalled that he approached PO Ortiz and § 87(2)(b) after he issued a summons to another individual who was vending at the corner of the location. PO Gould stated that based on the volume of art work § 87(2)(b) had on his table and on the ground, he assumed that § 87(2)(b) was vending as well. PO Gould observed § 87(2)(b) speak loudly to PO Ortiz as he flailed his arms as he approached. § 87(2)(b) informed PO Gould and PO Ortiz that they were taking away his First Amendment Rights. PO Ortiz and PO Gould ordered § 87(2)(b) to move his property because 6th Avenue was a restricted location that only allowed for vending at specified times. PO Gould did not recall the exact restricted time frame but stated that § 87(2)(b) was within the time parameters that were prohibited. PO Ortiz then informed § 87(2)(b) that they could confiscate his property because he was on a restricted street, and his table was too long and over a grate. PO Gould stated that according to the Department of Consumer Affairs ("DCA"), NYPD officers can confiscate a vendor's property if they refuse to move it. PO Gould stated that this rule was implemented by the City Council because of complaints made about the increasing congestion of the sidewalks along 6th Avenue.

New York City Administrative Code, Title 20: Consumer Affairs Section 2-310 (Board Review 05) states that if a general vendor peddles on a restricted street during prohibited times, any member of the New York City Police Department may remove his or her goods without further warning, if a general vendor peddles on the specified streets they are in violation of these regulations.

New York City Administrative Code, Title 20: Consumer Affairs Section 2-314 (Board Review 06) states that vending on 48th Street from Park Avenue to 7th Avenue is prohibited every day from 7:00 a.m. to 11:00 p.m.

§ 87(2)(g)

§ 87(2)(g)

Allegation (B) Abuse of Authority: Police Officer Brendan Gould took (a) photograph(s)/recording(s) of § 87(2)(b)

§ 87(2)(b) (Board Review 01) recalled that after PO Gould and PO Ortiz returned from their vehicle to issue him a summons, he told them not to leave the location because he had called 911 and requested a supervisor. PO Ortiz and PO Gould went back to their vehicle and waited there for the supervisor to arrive. § 87(2)(b) remained across the street and began to protest what had just occurred. He got down on both knees and began to speak about The Constitution. While protesting, § 87(2)(b) observed PO Gould stand in the middle of the street. PO Gould appeared to be laughing and recording § 87(2)(b) on what he believed to be the officer's personal cell phone.

PO Ortiz (Board Review 02) recalled that after he issued § 87(2)(b) the summonses, § 87(2)(b) informed him that he had called 911. PO Ortiz returned to his vehicle and waited for the other officers to arrive. During this time, PO Ortiz observed § 87(2)(b) fall to the ground, lean back against his stuff, and make signs. PO Ortiz did not recall seeing PO Gould film § 87(2)(b) nor did he hear about PO Gould doing so. PO Ortiz stated that there would be no reason for PO Gould to be recording § 87(2)(b) other than to document his actions.

Sgt. Juchniewicz (Board Review 03) recalled that when PO Ortiz and PO Gould arrived back at the vehicle, they informed him that § 87(2)(b) had called IAB on them in regards to the incident. At that time, PO Gould pulled up the job regarding § 87(2)(b)'s call on his department issued cell phone. Sgt. Juchniewicz observed § 87(2)(b) scream and make signs across the street from where they were parked. Sgt. Juchniewicz stated that PO Gould was issued a department cell phone that day but did not witness him use it to take photographs or recordings of § 87(2)(b).

PO Gould (Board Review 04) recalled that when he and PO Ortiz returned to § 87(2)(b)'s location to issue him the two summonses, § 87(2)(b) informed them that he had called 911 and IAB and requested that a supervisor be present. PO Gould and PO Ortiz returned to their vehicle to wait. While waiting, PO Gould observed § 87(2)(b) throw himself to the ground and cry as he created posters with words on it that PO Gould could not identify. PO Gould took out his department issued cell phone and looked for the job associated with § 87(2)(b)'s call as well as the IAB number. PO Gould held the phone up and in front of his face so that he could maintain a visual on § 87(2)(b) as well as the IAB number and job information. PO Gould was not filming or recording § 87(2)(b).

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to one CCRB complaint and has been named in a victim in one allegation (Board Review 07):
 - § 87(2)(b)
- PO Harry Ortiz has been a member-of-service for 12 years and has been a subject in two CCRB complaints and three allegations none of which were substantiated. § 87(2)(g)
- PO Brendan Gould has been a member-of-service for six years and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this case.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 7

Investigator:	_____ Signature	_____ Print Title & Name	_____ Date
Squad Leader:	_____ Signature	_____ Print Title & Name	_____ Date
Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date